IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 6849 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE D.A.MEHTA Sd/-

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1	Whether Reporters of Local Papers may be allowed to see the judgment?	NO
2	To be referred to the Reporter or not ?	NO
3	Whether their Lordships wish to see the fair copy of the judgment?	NO
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?	NO
5	Whether it is to be circulated to the civil judge ?	NO

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RAJKOT LODHIKA SAHAKARI KHARID VECHAN SANGH LTD. - Petitioner(s)

Versus

STATE OF GUJARAT THRO.SECRETARY,COOPERATION & & 2 - Respondent(s)

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Appearance :
MR BHARAT T RAO for Petitioner(s) : 1,
MS. ARCHANA RAVAL, AGP. for Respondent(s) : 1,
NOTICE SERVED BY DS for Respondent(s) : 1 - 3.

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CORAM : HONOURABLE MR.JUSTICE D.A.MEHTA

Date : 10/05/2007

ORAL JUDGMENT

1 RULE. Learned Assistant Government Pleader is directed to waive service.

2 This petition challenges order dated 27.02.2007 made by respondent No.2 – authority in exercise of powers under Section 80(2) of The Gujarat Co-operative Societies Act, 1961 appointing three persons named in the order as Nominee Directors to the Managing Committee of the petitioner society. The grievance ventilated on behalf of the petitioner by the learned Advocate for the petitioner is that the impugned order is in violation of the guidelines stipulated in Government Resolution dated 08.04.2004 (Annexure-H), as the respondent authority has failed to take into consideration the qualification and experience of the persons nominated to the petitioner society. Nor has the respondent authority taken into consideration the nature of activities carried on by the petitioner society so as to warrant nomination of the said three persons. It is further stated that the petitioner, in principle, does not dispute the right of the State Government to exercise powers

under Section 80(2) of the Act to nominate members to the Managing Committee, but such nomination has to be in light of the nature of activities of the petitioner society, as the underlying idea behind such nomination is to subserve the public interest as stipulated by Section 80(2) of the Act. That public interest cannot be served by appointment of persons who are neither qualified nor equipped and lack in experience in so far as the activities of the society to which nomination is made, and therefore, the respondent authority has committed an error in passing impugned order dated 27.02.2007.

3 The learned Assistant Government Pleader resisting the submissions made on behalf of the petitioner pointed out from the impugned order to submit that the authority has specifically stated that the appointment is made in public interest and once the authority had recorded such a finding no interference was called for. It was further submitted that in fact the Managing Committee already had the three nominees on its Board since 17.04.1999 and the present nomination was merely replacement of the

said three nominees. It was further submitted that a presumption should be raised that the impugned order has been made after taking into consideration the relevant requirements of the statute as well as the guidelines issued by the State Government from time to time in absence of any material to come to a contrary conclusion.

4 In rejoinder, the learned Advocate submits that the petitioner has already stated in no uncertain terms that in the event the said nominee Directors are continued, who were appointed on 17.04.1999, the petitioner would have no objection because the said three persons have participated in the functioning of the petitioner society satisfactorily between 1999 to 2006.

5 In the aforesaid circumstances, it is apparent that the applicability of provisions of Section 80(2) of the Act per se is not in dispute between the parties. The limited question that survives thereafter is whether the impugned order dated 27.02.2007 is in accordance with Government

Resolution dated 08.04.2004. On going through the impugned order it transpires that there is no whisper by the respondent authority that the guidelines laid down by the State Government have been taken into consideration before making impugned order. Not only that even in the affidavit-in-reply filed by the respondent authority there is no averment to the said effect that the safeguards provided in the Government Resolution dated 08.04.2004 have been taken care of. In the circumstances, without entering into any further discussion on merits of the issue it would serve the ends of justice if the impugned order dated 27.02.2007 (Annexure G) is quashed and set aside leaving it open to the respondent authority to initiate fresh action in accordance with law after taking into consideration the issues raised by the petitioner in various written objections filed before the authority and keeping in view the guidelines laid down by the State Government for appointing such nominees to the Managing Committee of a Co-operative Society. The respondent authority shall call upon the petitioner once again to make any further submissions, if the petitioner so desires, before

passing any final order.

6 The petition is allowed accordingly. Impugned order dated 27.02.2007 (Annexure G) is quashed and set aside. Rule made absolute. There shall be no order as to costs.

Sd/-
(D.A.Mehta, J.)

m.m.bhatt